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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,697	12/07/2001	Joyce Bedelia B. Santos	DIZ-1	5711

20808 7590 09/10/2003

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/10/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/017,697

Applicant(s)

B. SANTOS ET AL.

Examiner

Blessing M. Fubara

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-46 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

## **DETAILED ACTION**

### ***Election Requirement***

1. Claims 1 and 10 are generic to a plurality of disclosed patentably distinct species comprising:

- a) Liquid pharmaceutical composition comprising analgesic, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- b) Liquid pharmaceutical composition comprising antihistamine, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- c) Liquid pharmaceutical composition comprising anti-inflammatory drug, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- d) Liquid pharmaceutical composition comprising decongestant, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- e) Liquid pharmaceutical composition comprising anti-infective, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- f) Liquid pharmaceutical composition comprising mucolytic, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- g) Liquid pharmaceutical composition comprising antitussive, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.
- h) Liquid pharmaceutical composition comprising expectorant, sweetening agent, and/or viscosity-building agent, polyethylene glycol and polyvinyl pyrrolidone.

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The composition also contains additional drugs such as bronchodilator, mucolytic, antitussive, anti-inflammatory, antihistamine, decongestant and expectorant.

If applicants elect a decongestant, applicants are respectfully requested to elect a recited decongestant.

If applicants elect anti-infective, applicants are respectfully requested to elect a recited anti-infective.

If applicants elect mucolytic, applicants are respectfully requested to elect a recited mucolytic.

If applicants elect antitussive, applicants are respectfully requested to elect a recited antitussive.

If applicants elect expectorant, applicants are respectfully requested to elect a recited expectorant.

If applicants elect analgesic, applicants are respectfully requested to elect a recited analgesic.

If applicants elect antihistamine, applicants are respectfully requested to elect a recited antihistamine.

If applicants elect anti-inflammatory, applicants are respectfully requested to elect a recited anti-inflammatory.

Applicants are also respectfully requested to elect a specific a specific sweetening agent or viscosity-building agent. Applicants are further respectfully requested to elect to treat a single condition recited in claim 15.

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2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

3. A telephone call was made to attorney on 09/07/03 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).


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4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara   
Patent Examiner  
Tech. Center 1600